

DRAFT

AUSTIN TO MANOR TRAIL PROJECT DAFFAN LANE SEGMENT INTERLOCAL COOPERATION AGREEMENT CITY OF AUSTIN AND TRAVIS COUNTY

This Interlocal Cooperation Agreement is made and entered into by and between the City of Austin, Texas (the “City”) and Travis County, Texas (the “County”), hereinafter collectively referred to as the “Parties,” upon the premises and for the consideration stated herein, sometimes referred to collectively as the “Parties.”

WHEREAS, the City desires to develop and construct a portion of the Austin to Manor Trail Project along Daffan Lane between Johnny Morris Road and Decker Lane (FM 3177) (hereinafter referred to as the “Project”);

WHEREAS, the Austin to Manor Trail Project is a proposed multi-use trail portions of which are located within the corporate limits of the City and the unincorporated area of the County;

WHEREAS, the City will provide for the design, construction, operation, and maintenance of that portion of the Project (the “Improvements”), which will be located within existing Daffan Lane right-of-way that, as of the effective date of this Agreement, is not being used for motorized vehicle traffic;

WHEREAS, the area of the Daffan Lane right-of-way within which the Improvements are to be installed and maintained (the “Licensed Property”) is located in the unincorporated area of the County and is more particularly described in attached **Exhibit A**;

WHEREAS, all aspects of the Project will be completely funded by the City; and

WHEREAS, the Parties intend to conform to this Agreement in all respects with the Interlocal Cooperation Act, Texas Government Code Section 791.001 et seq.;

NOW, THEREFORE, the Parties agree as follows:

1. Grant.

Subject to the conditions in this Agreement and to the extent of the right, title, and interest of the County in and to the Licensed Property and without any express or implied warranties, the County grants to the City permission to use the Licensed Property to construct, maintain, and repair the Improvements existing in the Licensed Property as of the effective date of this Agreement.

2. Consideration.

The County and the City each acknowledge the receipt and sufficiency of good and valuable consideration for the execution of this Agreement, including but not limited to the following:

- (a) The safety of the citizens of the City and County to be afforded to the community by the Improvements; and
- (b) The agreement by the City and the County to provide the below-specified indemnification.

3. County's Rights to Licensed Property.

- (a) This Agreement is expressly subject and subordinate to the present and future right of the County, its successors, assigns, lessees, grantees, and licensees to construct, install, establish, maintain, use, operate, and renew any public utility facilities, franchised public facilities, roadways, or streets on, beneath, or above the surface of the Licensed Property. The County will take reasonable measures to prevent damage to any Improvements on the Licensed Property, however, any damage to or destruction of the City's property by the County in the exercise of the above-described rights will be at no charge, cost, claim, or liability to the County, its agents, contractors, officers, or employees. Nothing in this Agreement will be construed to limit in any way the power of the County to widen, alter, or improve the Licensed Property pursuant to official action by the governing body of the County or its successors; provided, however, that the County will provide the City with at least 30 days' prior written notice of any such contemplated action.
- (b) NOTWITHSTANDING ANY PROVISIONS IN THIS AGREEMENT TO THE CONTRARY, THE COUNTY RETAINS THE RIGHT TO ENTER UPON THE LICENSED PROPERTY, AT ANY TIME AND WITHOUT NOTICE, ASSUMING NO OBLIGATION TO THE CITY, TO REMOVE ANY OF THE IMPROVEMENTS OR ALTERATIONS THEREOF, WHENEVER SUCH REMOVAL IS DEEMED NECESSARY FOR: (A) EXERCISING THE COUNTY'S RIGHTS OR DUTIES WITH RESPECT TO THE LICENSED PROPERTY UNDER THIS LICENSE AGREEMENT; (B) PROTECTING PERSONS OR PROPERTY; OR (C) THE PUBLIC HEALTH OR SAFETY WITH RESPECT TO THE LICENSED PROPERTY.

4. Project Management.

- (a) The City will provide the project management services for the development and construction of the Project, as set forth herein.

- (b) The Director of Public Works of the Travis County Transportation and Natural Resources Department (the “County’s Director”) will act on behalf of the County with respect to the Project, coordinate with the City and the Texas Department of Transportation (“TxDOT”), receive and transmit information and instructions, and will have complete authority to interpret and define the County’s policies and decisions with respect to the Project. The County’s Director will designate a County Project Manager and may designate other representatives to act on behalf of the County with respect to the Project.
- (c) The City’s Public Works Director (the “City’s Director”) will act on behalf of the City with respect to the Project, coordinate with the County and TxDOT, receive and transmit information and instructions, and will have complete authority to interpret and define the City’s policies and decisions with respect to the Project. The City’s Director may designate a City Project Manager and may designate other representatives to act on behalf of the City with respect to the Project.
- (d) If a disagreement between the Parties arises regarding engineering design, design and construction standards, plans and specifications, inspection and testing, deficiencies and remedial action, change orders, or any other requirement or provision of this Agreement, and the disagreement is not resolved by the Parties’ Project Managers, it shall be referred as soon as possible to the Parties’ Directors for resolution. If the Directors do not resolve the issue, it shall be referred as soon as possible to the Assistant City Manager responsible for public works and the County Executive of the Travis County Transportation and Natural Resources Department for resolution.

5. Project Development.

- (a) The City will be responsible for the management of the development and construction of the Project, including (i) the development of the engineering design, plans and specifications for the sidewalks and associated improvements, (ii) the surveying, (iii) the construction, (iv) the inspection and testing and any required permitting and environmental assessments and clearances associated with the Project, and (vi) acceptance of the completed work on the City portion.
- (b) The plans and specifications for the Project shall be in accordance with the City’s standard design and construction standards

applicable to such trail project, unless otherwise agreed by the Parties. The plans and specifications will include the scope of design set forth in attached **Exhibit B**. In addition, the City will ensure that the plans and specifications will comply with the applicable Texas Accessibility Standards.

- (c) The City will ensure that the design engineer provides insurance in accordance with the standard requirements of the City for such projects, and the City will have the County and TxDOT named as an additional insured with respect to such coverage. The City will select and contract for professional services with the most highly qualified engineering consultant in accordance with the requirements of Chapter 2254 of the Texas Government Code, using City procurement procedures. The City will obtain the County's concurrence of the selection of the consultant prior to awarding the professional services agreement for the design engineer.
- (d) The City will be responsible for any relocation of existing County facilities required by the construction of the Improvements.
- (e) City permit and associated fees will be required only for the City portion of the Project, provided that any fees in lieu of compliance with City Standards will be required within any portion of the County's jurisdiction. The County shall coordinate the County's review of any permit application and issuance of any County or TxDOT permit concurrently with the County's review and approval of engineering design and plans and specifications for the Project.
- (f) The Parties will participate in joint review meetings with representatives from all affected City and County Departments and/or TxDOT in order to avoid and resolve conflicts in review comments. The Parties will provide a designated review team to expedite the review process for their respective portions of the Project.
- (g) The City shall require the consultant to take any appropriate remedial action to correct any deficiencies with the Project design identified by the County or TxDOT.

6. Project Bidding & Award of Construction Contract.

The City will be responsible for overseeing the solicitation of bids for the construction of the Project based on the approved plans and specifications. Bids shall be solicited by means of a competitive process and in accordance with the City's M/WBE policy.

7. Additional Management Duties of the City.

The City hereby covenants and agrees to the following:

- (a) Before constructing or making repairs to the Improvements, the City will provide four sets of the construction plans and specifications for the Project to the County for review and approval to ensure, among other things, that the construction or repairs do not impede roadway drainage or create traffic safety issues; the City agrees to make whatever changes are requested by the County to ensure that roadway drainage is not impeded, traffic safety issues are not created, and the safety of the public is not jeopardized;
- (b) The City will provide written responses to the County's initial plan review comments within fourteen (14) working days of receipt from the County;
- (c) The City will provide written notice to the County of the schedule for design, and the advertisement for bids, award of contract, and construction of the Project;
- (d) The City will be responsible for any relocation of existing County facilities required by the construction of the Improvements. Before relocating any such facilities, the City must obtain approval from the County to ensure that the facilities are relocated to a place that is acceptable to the County;
- (e) The City must correct any deficiencies with the Project design identified by the County or TxDOT;
- (f) The City is solely responsible for the costs and the securing of any permits required for use of the Licensed Property under this License Agreement;
- (g) The City will provide executed change orders to the County related to the Licensed Property;
- (h) The City will provide a copy to the County's Project Manager of any change order request related to the Licensed Property within two (2) working days of the City receiving them from the Contractor;
- (i) The City will coordinate utility relocations for the Project and funding to pay the costs of utility relocations that are required for the Project and that are not legally the responsibility of the utility owner;

- (j) To the extent required, the City will obtain TxDOT approval of the development and construction of the Project;
- (k) The City will coordinate the acceptance of the Project upon satisfactory completion of construction and any applicable warranty or construction performance period;
- (l) The City will provide a copy to the County of the record drawings of the Project for the County's records;
- (m) The City will maintain the Licensed Property; and
- (n) Before construction or repair of the Improvements, the City must provide its traffic control plans to the County for review and approval.

8. Management Duties of the County.

The County hereby covenants and agrees to provide:

- (a) reviews and approvals of the submitted plans and specifications for the Project by providing any initial comments within fourteen (14) working days of submittal, and follow-up reviews and approvals of the City's responses to those initial comments within seven (7) working days, and work in good faith to resolve any outstanding issues;
- (b) reviews for any applicable permit applications required by the County for the Project and work in good faith to resolve any outstanding issues;
- (c) reviews of any change order proposal for the Project by returning the change order request to the City within seven (7) working days of its receipt by the County's Project Manager, with a written recommendation for its disposition;
- (d) at the option and expense of the County, the County may perform any additional independent inspection and testing of the Project in coordination with the City's inspectors and as agreed to by the City and County Project Managers. Any such additional testing shall be scheduled to avoid delaying the construction of the Project to the maximum extent practical. In connection therewith, the County will designate inspectors to make any such inspections, including any joint final inspection of the completed Project with the City; the County's inspectors shall communicate any issues to the City's

inspectors only, and City inspectors will in turn communicate those issues to the construction contractor;

- (e) reporting of any deficiencies observed in the construction of the Project immediately to the City's Project Manager with an additional written report within two (2) working days;
- (f) attendance at meetings at the request of the City's Project Manager;
- (g) design review comments on the Project to the City at appropriate agreed-to intervals of design complete stages within one week of receiving design documents from the City;
- (h) cooperation with the City to obtain any applicable permits and environmental clearances for the Project;
- (i) County approval of the construction of the Project upon satisfactory completion of construction and any applicable warranty or construction performance period and a recommendation to TxDOT for acceptance; and
- (j) Consent to continued City maintenance of the Project except for any portion of the Project located in the unincorporated area of the County for which the County has requested to assume maintenance responsibilities if the City has granted the request.

9. Bond and Guarantee.

All construction contracts affecting the Project shall include a payment and performance bond acceptable to and in favor of and benefiting the City and the County for the full amount of the contract and a warranty by the contractor executed in favor of and benefiting the City and the County for a period of one year from the date of acceptance of the Project. The City and the County will be named as co-obligees on the bonds.

10. Insurance.

- (a) The County understands and agrees that the City is self-insured and will provide a letter of self-insurance to the County in accordance with City practices.
- (b) The City agrees to cause the design engineer for the Project to obtain and maintain in force throughout the term of this Agreement insurance in accordance with the standard requirements of the City for such projects, and the City will have the County and TxDOT

named as an additional insured with respect to such coverage. The policy must contain a provision requiring the insurer to give at least 30 calendar days' prior written notice before any termination or expiration of such policy for any reason.

- (c) The City agrees to cause City's contractor(s) installing, repairing, or maintaining the Improvements to agree under its City contract to obtain and maintain in force throughout the term of this Agreement commercial general liability insurance coverages A&B with minimum combined bodily injury and property damage limit of \$500,000 per occurrence, Texas Workers' Compensation and Employers' Liability Insurance with minimum policy limits of \$100,000 bodily injury per accident, \$500,000 bodily injury by disease and \$100,000 bodily injury by disease each employee, and business automobile liability insurance with either (a) minimum combined single limit of \$500,000 per occurrence for bodily injury and property damage, or (b) \$250,000 bodily injury per person, \$500,000 bodily injury per occurrence and at least \$100,000 property damage liability each accident. The policy must name both County and City as additional insureds and must contain a provision requiring the insurer to give at least 30 calendar days' prior written notice before any termination or expiration of such policy for any reason..

11. Indemnification.

- (a) To the extent permitted by Texas law, the City and the County agree that each separate governmental entity will be responsible to the other for its own proportionate share of any liability for its negligent acts and omissions for claims, suits, and causes of action, including claims for property damage, personal injury and death, which arises from or is in any manner connected to this Agreement and the Licensed Property and as determined by a court of competent jurisdiction, provided that the execution of this Agreement will not be deemed a negligent act.
- (b) The City agrees to cause City's contractor(s) installing, repairing, or maintaining the Improvements to agree under its City contract to indemnify the County and the City against all claims, costs, losses and damages arising out of or resulting from the performance of the work under the City contract, provided the claim, cost, loss or damage is:
 - (1) attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property, including the loss of use resulting from it; and

- (2) caused in whole or part by any negligent act or omission of City contractor, any of City contractor's subcontractor(s), supplier(s), or any person or organization directly or indirectly employed by any of them to perform or furnish any of the work or anyone for whose acts any of them may be liable, regardless of whether or not caused in part by any negligence or omission of the County or City or whether liability is imposed upon the County or City by laws or regulations regardless of the negligence of any such entity.

12. Financial Obligations.

- (a) The City will provide funding for the cost of design, regulatory permitting, utility relocations, construction, construction management, inspection, and testing for the Project as set forth in attached **Exhibit "B."**
- (b) Any County funding will require the additional approval of the Travis County Commissioners Court.
- (c) The City shall provide funding for the costs of the design and construction of the Project up to the amount of \$_____ Thousand Dollars (\$_____.00). Any additional funding will require the approval of the City Council.
- (d) The City shall obtain the written approval of the County for all change orders affecting the design and construction of the Project prior to the City issuing the approved change order to the contractor, such approval not to be unreasonably withheld or delayed. The County's Project Manager shall meet with the City's Project Manager to review the contractor's progress reports and invoices for the Project before approval by the City.
- (e) The City shall timely pay submitted invoices for the Project. The invoices for the Project will be paid on the basis of work completed in accordance with the approved plans and specifications.

13. Continued Maintenance.

- (a) The City agrees to maintain the completed Project, including the Improvements, as a part of the overall Austin to Manor Trail Project and will provide periodic maintenance, repair, and reconstruction of the Project at regular intervals to be agreed to by the Directors and on an as-needed basis. Any City maintenance contractor will provide general liability, automobile, and workers compensation

insurance coverage in the standard amounts required for similar City projects and will name the County as an additional insured. The City will coordinate any entry into County right-of-way for maintenance purposes with the County's Transportation and Natural Resources Department.

- (b) The County has the right to request to assume maintenance responsibility for any portion of the Austin to Manor Trail Project located within the unincorporated territory of the County with the understanding that the City will grant any such request unless doing so would violate any applicable federal grant requirements.
- (c) In consideration of the design and construction of the Project and the continued maintenance obligations of the City, the County agrees to use reasonable good faith efforts to avoid any interference with the completed Project, including any interference by future road construction or utility assignments and installation. If the County determines that, in (1) exercising the County's rights or duties with respect to the Licensed Property under this Agreement, including facilitating the movement of goods and services in Travis County by widening or realigning Daffan Lane, (2) protecting persons or property, or (3) protecting the public health or safety with respect to the Licensed Property, it is necessary to relocate the Improvements, the County will use reasonable good faith efforts to provide for the relocation of the Improvements, including relocation into additional right-of-way. The City agrees to pay for the cost of relocating the Improvements and for the cost of any additional rights-of-way and/or easements the County determines are needed for the widening or realignment of Daffan Lane.

14. Removal or Modification.

The City agrees that removal or modification of any Improvements now existing or to be later installed or replaced will be at the County's sole discretion, except where otherwise provided by this Agreement. The terms and conditions of this Agreement will be binding on any successors and assigns in interest to the City or the County.

15. Default.

In the event that the City fails to maintain the Licensed Property, then the County will give the City written notice thereof by registered or certified mail, return receipt requested, to the addresses set forth below.

16. Commencement; Termination by Abandonment.

This Agreement will begin on the date of full execution and continue thereafter for so long as the Licensed Property is used for the purposes set forth herein, unless terminated under other provisions of this Agreement. If the City abandons the use of all or any part of the Licensed Property for such purposes set forth in this Agreement, then this Agreement, as to such portion or portions abandoned, will expire and terminate following 30 days' written notice by the County to the City, if such abandonment has not been remedied by the City within such period. The County will thereafter have the same title to the Licensed Property so abandoned as though this Agreement had never been made and will have the right to enter on the Licensed Property and terminate the rights of the City, its successors and assigns hereunder. All Improvements of the City, not removed, may be removed by the County at the expiration of the 30 day notice period.

17. Termination.

- (a) Termination by the City. This Agreement may be terminated by the City by delivering written notice of termination to the County not later than 30 days before the effective date of termination. If the City so terminates, then it may remove Improvements that it made on the Licensed Property within the 30 day notice period. Any Improvements not removed within said period may be removed by the County upon expiration of said period.
- (b) Termination by County. Subject to providing at least 30 days' prior written notification to the City or its successors in interest, this Agreement is revocable by the County if:
 - (1) The Improvements or a portion of them materially interfere with the County'S use of the Licensed Property;
 - (2) Use of the Licensed Property becomes necessary for a public purpose;
 - (3) The Improvements or a portion of them constitute a danger to the public which the County deems not to be remediable by alteration or maintenance of such Improvements;
 - (4) Despite 30 days' written notice to the City, maintenance or alteration necessary to alleviate a danger to the public has not been made; or
 - (5) The City fails to substantially comply with the terms and conditions of this Agreement.

18. Eminent Domain.

If eminent domain is exerted on the Licensed Property by paramount authority, then the County will, to the extent permitted by law, cooperate with the City to effect the relocation of the City's affected Improvements at the City's sole expense. The City will be entitled to retain all monies paid by the condemning authority for its Improvements taken, if any.

19. Assignment.

The City must not assign, sublet, or transfer its interest in this Agreement without the written consent of the County. If such consent is granted, it will then be the duty of the City, its successors and assigns, to give prompt written notice to the County of any assignment or transfer of any of the City's rights in this Agreement, giving name, date, address, and contact person.

20. Annexation by the City.

If the total area within the Licensed Property is annexed for full purposes by the City of Austin, then this Agreement will terminate without the need for any action by the County.

21. Miscellaneous.

(a) Force Majeure. In the event that the performance by the City or the County of any of its obligations or undertakings hereunder shall be interrupted or delayed by any occurrence not occasioned by its own conduct, whether such occurrence be an act of God, or the common enemy, or the result of war, riot, civil commotion, sovereign conduct, or the act or conduct of any person or persons not a party or privy hereto, then it shall be excused from such performance for such period of time as is reasonably necessary after such occurrence to remedy the effects hereto.

(b) Notice. Any notice given hereunder by either party to the other shall be in writing and may be effected by personal delivery in writing or by registered or certified mail, return receipt requested when mailed to the proper party, at the following addresses:

CITY: Howard S. Lazarus, P.E., Director (or successor)
 City of Austin Public Works Department
 505 Barton Springs Road
 Austin, Texas 78704

WITH COPY TO: Gordon Bowman (or successor)
Assistant City Attorney
City of Austin Law Department
301 W. 2nd Street
Austin, Texas 78701

COUNTY: Steven M. Manilla, P.E. (or successor)
County Executive, TNR
P. O. Box 1748
Austin, Texas 78767

WITH A COPY TO: David Escamilla (or successor)
Travis County Attorney
P. O. Box 1748
Austin, Texas 78767

- (c) Number and Gender Defined. As used in this Agreement, whenever the context so indicates, the masculine, feminine, or neuter gender and the singular or plural number shall each be deemed to include the others.
- (d) Entire Agreement. This Agreement contains the complete and entire Agreement between the Parties respecting the matters addressed herein, and supersedes all prior negotiations, agreements, representations, and understanding, if any, between the parties respecting the construction of the Project. This Agreement may not be modified, discharged, or changed in any respect whatsoever except by a further agreement in writing duly executed by authorized representatives of the Parties. No official, representative, agent, or employee of Travis County, Texas has any authority to modify this Agreement, except pursuant to such express authority as may be granted by the Commissioners Court of Travis County, Texas. The recitals set forth above and the attached exhibits are incorporated herein.
- (e) Effective Date. This Agreement takes effect upon the last date of execution of the Agreement by the City and the County. This Agreement will automatically renew from year to year until the completion of the warranty period for the Project and any litigation or other matters surviving the completion of the Project, unless terminated earlier by the Parties.
- (f) Other Instruments. The Parties covenant and agree that they will execute other and further instruments and documents as may become necessary or convenient to effectuate and carry out the purposes of this Agreement.

- (g) Invalid Provision. Any clause, sentence, provision, paragraph, or article of this agreement held by a court of competent jurisdiction to be invalid, illegal, or ineffective shall not impair, invalidate, or nullify the remainder of this Agreement, but the effect thereof shall be confined to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or ineffective.
- (h) Current Funds. The party or parties paying for the performance of governmental functions or services shall make payments therefore from current revenues available to the paying party.
- (i) Venue. TO THE EXTENT ALLOWED BY TEXAS LAW, IT IS AGREED THAT VENUE FOR ALL LAWSUITS CONCERNING THIS AGREEMENT WILL BE IN TRAVIS COUNTY, TEXAS. THIS AGREEMENT CONCERNS REAL PROPERTY LOCATED IN TRAVIS COUNTY, TEXAS, AND IS WHOLLY PERFORMABLE IN TRAVIS COUNTY.
- (j) Interpretation. In the event of any dispute over its meaning or application, this Agreement will be interpreted fairly and reasonably and neither more strongly for or against either party.
- (k) Application of Law. This Agreement is governed by the laws of the State of Texas.

CITY OF AUSTIN, TEXAS

By: _____

Name: _____

Title: _____
Authorized Representative

Date: _____

Approved as to Form:

Assistant City Attorney

TRAVIS COUNTY, TEXAS

By: _____
Samuel T. Biscoe, County Judge

Date: _____